



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
<http://www.epa.gov/region08>

July 11, 2003

Ref: 8ENF-T

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Donn D. Eley  
Registered Agent for Village Homes  
of Colorado, Inc.  
6 West Dry Creek Circle  
Littleton, CO 80120

Re: Administrative Order under the  
Clean Water Act 33 U.S.C. § 309(a)

Dear Registered Agent:

Enclosed is a United States Environmental Protection Agency Region 8 ("EPA") Administrative Order ("Order") issued to Village Homes of Colorado, Inc., ("Village Homes"). The Order specifies the nature of the violations under the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq. (the "CWA"). The authority for such action is provided to EPA under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). The Order describes the actions necessary in order for Village Homes to achieve compliance with the CWA.

The CWA requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any Orders issued thereunder. Section 309 of the CWA provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Section 508 allows for debarment from Federal contracts and/or loans for any noncompliance with the CWA or with an Order issued pursuant to the CWA (33 U.S.C. § 1368). Also enclosed is a memorandum from the Colorado Department of Health and Environment regarding EPA enforcement proceedings in CO.



Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of said Order. If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to compliance with the CWA, the most knowledgeable people on my staff regarding these matters are Lee Hanley, Technical Enforcement, at (303) 312-6555, and David J. Janik, Supervisory Enforcement Attorney, at (303) 312-6899.

Sincerely,

**A. M. Gaydosh for/**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

cc: Tina Artemis, Regional Hearing Clerk  
Mark Pifher, CDPHE

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
Docket No. CWA-08-2003-0083**

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| In the Matter of:               | ) |                             |
|                                 | ) |                             |
| Village Homes of Colorado, Inc. | ) | <b>ADMINISTRATIVE ORDER</b> |
| a Colorado corporation,         | ) |                             |
|                                 | ) |                             |
| Respondent.                     | ) |                             |

**INTRODUCTION**

1. This administrative order is authorized by Congress in section 309(a) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA or the Act). 33 U.S.C. § 1319(a). The Environmental Protection Agency (EPA) regulations authorized by the statute are set out in part 122 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, permits or EPA regulations constitute violations of that section of the Act.

2. The undersigned EPA official has been properly delegated the authority to issue this order. EPA has consulted with the State as required by the Act. 33 U.S.C. § 1319(g)(1).

3. EPA alleges that Respondent has violated the Act, permit and/or regulations and orders Respondent to achieve compliance, as more fully explained below.

**FINDINGS OF FACT AND LAW**

4. In order to restore and maintain the integrity of the nation's water, section 301(a) of the Act prohibits the discharge of pollutants into navigable waters of the United States, unless it is in compliance with a permit issued pursuant to the Act. 33 U.S.C. § 1311(a).

5. Section 402 of the Act establishes a National Pollutant Discharge Elimination System (NPDES) program, administered by EPA or State, to permit discharges into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342.

6. The Act requires that a discharge of storm water associated with an industrial activity to navigable waters must comply with the requirements of an NPDES permit. 33 U.S.C. § 1342(p).

1           7. The Act authorized, and EPA issued, regulations that further define requirements for  
2 NPDES permits for storm water discharges. 33 U.S.C. § 1318, § 1342(p). The regulations are  
3 found at 40 C.F.R. part 122.  
4

5           8. EPA regulations define discharges associated with industrial activity to include  
6 construction activity. 40 C.F.R. § 122.26(b)(14)(x).  
7

8           9. EPA regulations require each person who discharges storm water associated with  
9 industrial activity to either apply for an individual permit or seek coverage under an existing and  
10 lawful general permit. 40 C.F.R. § 122.26(c).  
11

12           10. The State of Colorado has lawfully issued a general permit, under the authority of  
13 State law and the Act, which authorizes the discharge of storm water associated with  
14 construction activities, if done in compliance with the conditions of the permit. The State of  
15 Colorado issued permit no. COR- 031867 to Village Homes of Colorado on July 3, 1997, which  
16 provided coverage under COR-030000. Colorado permit no. COR-030000; attached as exhibit A  
17 (“permit”).  
18

19           11. The permit requires, among other things, that a person discharging pollutants develop  
20 and implement an adequate storm water management plan (SWMP), conduct regular specified  
21 storm water inspections, and implement best management practices (“BMPs”). BMPs include  
22 structural controls (such as sediment ponds and silt fences) and management practices (such as a  
23 dedicated concrete washout area and street sweeping).  
24

25           12. Respondent is a corporation, incorporated in the State of Colorado, and doing  
26 business in the State of Colorado.  
27

28           13. Respondent is a “person” within the meaning of section 502(5) of the Act, and  
29 therefore subject to the requirements of the statute and/or regulations. 33 U.S.C. § 1362(5).  
30

31           14. Respondent owns or is engaged in construction activities at a facility located at the  
32 Fieldstone Subdivision, 64<sup>th</sup> and Easley Road, Arvada, CO (“facility”).  
33

34           15. Respondent engaged in construction activities at the facility at all times relevant to  
35 this action.  
36

37           16. Respondent is therefore engaged in an “industrial activity” as defined by EPA  
38 regulations. 40 C.F.R. § 122.26(b)(14).  
39

40           21. Storm water, snow melt, surface drainage and run off water leaves Respondent’s  
41 facility and goes into the Arvada municipal separate storm sewer system (MS4).  
42

43           22. The run off and drainage from Respondent’s facility is “storm water” as defined by

1 EPA regulations. 40 C.F.R. § 122.26(b)(13).  
2

3 23. Storm water contains “pollutants” as defined by the Act. 33 U.S.C. § 1362(6).  
4

5 24. The Arvada MS4 discharges to Van Bibber Creek tributary to Ralston Creek which is  
6 “navigable water” and “waters of the United States,” as defined by the Act and EPA regulations,  
7 respectively. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.  
8

9 25. Respondent’s storm water runoff is the “discharge of a pollutant” as defined by EPA  
10 regulations. 40 C.F.R. § 122.(b)(14)(x).  
11

12 26. An authorized EPA employee entered the facility with the consent of Respondent on  
13 June 10, 2002, to inspect it for compliance with the statute, permit and regulations. The counts  
14 below outline violations confirmed by the inspector.  
15

16 27. Construction activities, phase III, disturbing over five acres commenced at the facility  
17 on December 1, 2001.  
18

19 28. Section 301 of the Act and the storm water regulations at 40 C.F.R. § 122.26 require  
20 that a stormwater permit be obtained for construction activity including clearing, grading and  
21 excavation disturbing at least five acres. Respondent is covered under the permit and subject to  
22 its terms and conditions.  
23

24 29. Respondent provided information to EPA on February 11, 2003, regarding a SWMP  
25 for the facility and inspections conducted at the facility since June 10, 2002.  
26

27 **COUNT 1**  
28

29 29. Respondent failed to conduct inspections as required by the permit.  
30

31 30. Respondent’s failure to conduct inspections as required by the permit constitutes  
32 violations of the Act. 33 U.S.C. § 1319, § 1342(p).  
33

34 **COUNT 2**  
35

36 31. At the time of that inspection, Respondent’s SWMP did not contain the following  
37 required components: site description, a description of BMPs which clearly describes in what  
38 construction phase each BMP will be implemented, signatory requirements, and procedures for  
39 SWMP review and changes.  
40

41 32. Respondent’s failure to develop a complete SWMP as required by the permit  
42 constitutes violations of the Act. 33 U.S.C. § 1319, § 1342.  
43

**COUNT 3**

33. The permit requires Respondent to implement best management practices (BMPs) in order to minimize the impact of Respondent's construction activities on waters of the United States. At the time of that inspection, the following BMPs were not in place or were not being implemented: fuel containment, vehicle track out pad, and inlet storm drain protection.

34. Respondent's failure to implement BMPs is required by the permit constitutes violations of the Act. 33 U.S.C. § 1319, § 1342(p).

**ORDER**

Respondent is ordered to perform the following actions:

35. Within 10 days of receipt of this administrative order ("Order"), submit written notice of intent to EPA to comply with the requirements of this Order.

36. Within 30 days of receipt of this Order, develop a complete SWMP in accordance with the permit. Submit a copy of the complete SWMP within 35 days of receipt of this Order. Respondent should review its February 11, 2003 submittal to EPA and determine if additional changes are necessary to the SWMP to be in compliance with the permit. Respondent can refer to its February 11, 2003 submittal if no additional changes to the SWMP are necessary. Respondent must implement all conditions in its SWMP in accordance with its permit.

37. Within 30 days of receipt of this Order, ensure that inspections are being conducted as outlined in the SWMP and at least meet the minimum requirements of the permit. Provide EPA with a statement as to the adequacy of the inspection schedule in the February 11, 2003 submittal, or provide a revised schedule within 30 days of receipt of this letter.

38. Within 45 days of receipt of this Order, submit written documentation and photographs demonstrating that BMPs have been developed and implemented. This must include, but not limited to: cleaning the storm drains that are connected to the MS4, and evaluating and restoring, if necessary, the MS4 detention ponds to its design capacity. In addition, all required BMPs must be implemented in accordance with the permit and the SWMP for the life of the construction project.

39. Submit copies of the inspection reports quarterly, 10 days after the end of each calendar quarter (October 10, 2003, January 10, 2004, April 10, 2004, July 10, 2004, etc.) for the life of the construction project.

40. Upon final stabilization of the facility, submit an Inactivation Notice as required in the permit.

## OTHER PROVISIONS

41. EPA regulations protect confidential business information. 40 C.F.R. part 2, subpart B. If Respondent asserts a business confidentiality claim pursuant to these regulations for information required to be submitted under this order, such information shall only be provided to EPA. If EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in the regulations. Unless a confidentiality claim is asserted at the time the information is submitted, the information shall be provided to both EPA and the Colorado Department of Public Health and Environment as specified below, and EPA may make the information available to the public without further notice to you.

42. All written notices and reports required by this Order shall be sent to the following addresses:

Lee Hanley (8ENF-T)  
U.S. EPA Region 8  
Office of Enforcement, Compliance  
and Environmental Justice  
Technical Enforcement Program  
999 18<sup>th</sup> Street, Suite 300  
Denver, Colorado 80202-2466

Scott Klarich (WQP-P)  
Colorado Department of Health  
and Environment  
Water Quality Control Division  
Water Quality Section  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

43. Any failure to comply with the requirements of this Order shall constitute a violation of the Order and may subject Respondent to penalties as provided under the Act. 33 U.S.C. § 1319.

44. This Order does not constitute a waiver or modification of the terms and conditions of Respondent's Colorado Discharge Permit System Permit which remains in full force and effect, or of any other legal responsibilities or liability.

45. This Order does not constitute a waiver of or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. The Act authorizes the assessment of civil penalties of up to \$27,500 per day for each violation of the Act, and fines and imprisonment for willful or negligent violations. 33 U.S.C. § 1319.

Date: 7/9/03 By: **SIGNED**  
Carol Rushin  
Assistant Regional Administrator

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JULY 11, 2003.**

